

**\*\* IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN  
DISTRICT ; BIRMINGHAM ; ALABAMA \*\***

**\* Ex parte: #106899X  
JOE HENDERSON**

**\* PETITIONER \***

**\* In re: HENDERSON #106899X Vs State of  
(Petitioner)  
Alabama et al, (ELMORE COUNTY CC-85-69  
(Respondents) CIRCUIT COURT, Birmingham)**

**CASE NUMBER:**

**to be supplied by the District  
Court Clerk**

**4:19-CV-266-MHH-JEO**

**\*\* PETITION FOR WRIT OF HABEAS CORPUS ; A WRIT OF HABEAS CORPUS PURSUANT  
\* 28 USC § 1651 DEMANDING 'SPECIAL CLASS' U.S. CITIZEN BE ANSWERED BY  
STATE OF ALABAMA CONCERNING PETITIONER'S 34 (thirty-four) YEARS OF  
INCARCERATION WHEN PETIT JURY OF ELMORE COUNTY CC-85-69 ACQUITTED  
PETITIONER INSTANT JOE HENDERSON #106899X \*\***

**\* APPEARS NOW THE PETITIONER, Joe Henderson #106899X, here  
indefinitely, indigent, pro se, by way of assistance to read and write instant  
document, RESPECTFULLY REQUESTING THAT THE FEDERAL COURT INTERVENE IM-  
MEDIATELY TO THE SUBSTANTIATED, VERIFIED BY DECLARATION UNDER PENALTY  
OF PERJURY, HARKINS V KERNER**

**\* PETITIONER hereby HENDERSON an inmate of the Alabama De-  
partment of Corrections (ADOC) #106899X (PRISONER I.D. Number) #106899X (ten-  
sixty-eight-NINETY-NINE EX) FOR THE PAST 34 (thirty-four) years on  
the State of Alabama AUTHORIZED ORDER OF THE ELMORE COUNTY CIRCUIT  
Court case number: CC-85-69, Judge John Bush presiding, that did ACCEPT,  
FURTHER, RENDER JUDGMENT UPON SUBSEQUENTLY, SENTENCE TO PUNISH-  
MENT FOR THE INDEFINITE AND MANDATORY LIFE WITHOUT THE POSSIBILITY  
OF PAROLE, LIFE UNTIL DEATH INCARCERATION in the ADOC, because:**

**A. Petit Jury announced verdict:**

**"We the jury find the defendant  
Joe Henderson guilty of Robbery in the  
First Degree as EMBRACED by the  
indictment, ..."**

**\* IF THE COURT WILL NOW PLEASE TURN TO THE DOCUMENTS,  
ATTACHED HERETOFORE AS EXHIBITS by HENDERSON instant Petitioner,  
A, B, C, D, and E these documents are State of Alabama AUTHORIZED  
A = ADOC INMATE SUMMARY, B = Letter from Circuit Court Clerk of Elmore →**

(EX PARTE:)

(2)

(HENDERSON)

"B" (continued from previous page...)  
... County, Wetumpka, Alabama Larry Dozier; "C" The Capital Offense Indictment, procured in Spring 1985 by Elmore County Grand Jury (§13A-5-40(a)(2) Alabama Code 1975); "D" The Case Action Summary of CC-85-69, State v Henderson HANDWRITTEN by The presiding Circuit Court Judge of Elmore County The Honorable John Bush (see: line entry at 11/28/90 → The Jury's Verdict.)

\* THIS COURT IS WELL FAMILIAR WITH CAPITAL OFFENSE INDICTMENTS, the only "lesser included" offense of a Capital Offense is MURDER, HOMICIDE.

This Court is well familiar with 'AMENDING' an indictment. An Amendment CAN NOT be FIXED to allude to any charges not contemplated BY WHAT THE GRAND JURY BRIGHT LINED RULED was the criminal circumstance to accuse Petitioner Henderson then defendant.

There is NO AGREEMENT by parties to 'AMEND' the Capital Offense charged, CASE ACTION SUMMARY WOULD HAVE NOTED SUCH A HUGE ERROR.

Court documents conclude the following: The Jurys finding of GUILT of the accused for Robbery I° is an ACQUITTAL for the Capital Offense, §13A-5-40(a)(2) Ala Code 1975, MURDER during Robbery in the First Degree... Once an ACQUITTAL had occurred ALL ELEMENTS of the Indicted Charge ARE OBLITERATED NO LONGER IN EXISTENCE, so the Robbery I° verdict is not only PLAIN, OBVIOUS, and CLEAR but ILLEGAL. WHO CHARGED THE JURY that said jury could embrace certain 'aspects', elements, and return verdict? THERE IS ONLY ONE PERSON ALLOWED TO CHARGE A JURY AND the fact that NO OBJECTIONS are noted by 2 (two) professional attorneys that stood silent (a mere 4 (four) years after the US Supreme Court had ruled it ILLEGAL for defense counsel to JOIN-UP with Judge and prosecutor to commit such vulgar and disrespectful acts in a "United Front" manner against a defendant, CRONIC V US 466 US (USSUPCT 1986);

Please see: Alabama Code 1975 @ §13A-5-40(a)(2), AND §13A-5-40(b) (referring to primarily the 2<sup>nd</sup> (second) sentence:

1<sup>st</sup> sentence is passed. Second sentence only:  
"Subject to the provisions of §13A-5-41, (lesser included capital offenses) MURDER as defined in §13A-6-2(a) 2 and 3, AS WELL AS MURDER as defined in Section 13A-6-2(a) 1 MAY BE A LESSEER OFFENSE of the Capital Offenses defined in subsection (a) of this section..."

HENDERSON RESPECTFULLY requests that this Court, The United States District Court for the Northern District of Alabama @

o The Hugo L Black, US COURTHOUSE, (Court Clerks Office)  
1729. 5th Avenue North  
Birmingham, Alabama 35203 - USA -

INTERVENE ON BEHALF OF A UNITED STATES CITIZEN that is, has been for thirty-four (34) years IMPRISONED WHEN THE JURY'S verdict, EXHIBIT "D", ACQUITTED Petitioner Henderson of the Capital Offense §13A-5-40 (a)(2), Ala Code 1975, THAT INCLUDED the same Robbery element of the Capital Offense.

The pronouncement of GUILT of Robbery I°, SUBSTANTIALLY THE EQUIVALENT OF AN ACQUITTAL of same Robbery I°, AND the primary goal of the indictment the victims demise.

The Honorable Court does not need HENDERSON defining legal arithmetic nor publishing any new treaties concerning same. There is an abundance of information this Court needs to review and problematic to the entire situation is your Petitioner Mr. Joe Henderson, please see EXHIBIT "A" attached. This is a "time sheet", GIVEN to inmates of ADOC to show current custody dates: EOS dates, Parole Dates (approximately), Charges pending, charges/offenses being punished for then of course there is all pertinent, personal, knowledge of Mr Joe Henderson. Please review the document EXHIBIT "A",

HENDERSON 106899X, born December 5, 1953, HENDERSON JUST TURNED ~~64~~ Sixty-five) 65 years old. The past thirty-four (34) years in ADOC custody by the ORDER of Elmore County Circuit Court (C-85-69) Indicted on February 1, 1985, AND JAILED same, for Capital Offense §13A-5-40(a)(2) Ala. Code 1975, Murder/Robbery in First Degree. Remand was ORDERED on 12-30-88, 11/26/90 was New Trial Date. 5 years 5 months 27 days JAIL CREDIT. Henderson was not "in jail" Henderson was on DEATH ROW, held by ADOC, see ABOVE CENTER EXHIBIT "A", below title of page - PREV / NEXT: Z452 (this is "Z" custody of ADOC, "Z" custody number 452 is DEATH ROW of Alabama.)

o See: Exhibit A, attached. HENDERSON is a BLACK MALE, review inset picture of Petitioner Henderson, He, Petitioner Instant, Henderson is entitled to the "SPECIAL CLASS" protections of 42 USC §1983, Civil Rights Act of 1964 §42, USC,

Now see line ~~11~~ SIX, (6), "Admit" 11/28/90 2 two Life Sentences w/o Parole. 2 (two) ??? How and where is the second L.W.O.P sentence? Why is there only 1 (one) Charge/offense listed on document? Why AFTER Henderson questioned ADOC administrative staff, Classification Specialist, named later if necessary, concerning this did same ADOC personell tell Henderson "I DON'T KNOW but it looks like Elmore County really screwed you around." Please see the very bottom of page at left the "Run date: 12/17/18, interview with Specialist some 6 or 7 months ago. It is a foul, but it continues see →



EXHIBIT A = Middle of document Right side - The C.S., consecutive - consecutive TO WHAT? there is to HENDERSON'S knowledge NO other L.W.O.P. punishment to serve. No other charges even pending see Middle of Page - Detainer Warrants - 106899X - "NO ACTIVE..."

\* The Capital Murder Indictment, EXHIBIT "C", attached, is THE ONLY INDICTMENT from Elmore County Circuit Court. Exhibit B, letter from Elmore County Court Clerk Larry Dozier states it flatly, No Robbery charges exist for the name of Joe Henderson. 34 (thirty-four) YEARS! CC-85-69 is a Capital Offense indictment. ADOC Trimate Summary; "Time Sheet" for #106899X Joe Henderson, petitioner hereof, states the following offenses for 00106899X (left side near middle, black arrow, mark)

Seq.

1 (one) meaning <u>INDIVIDUAL</u> ,	County <u>ELMORE</u>	Sentencing Date: 11/28/90 -
	251A Robbery 1	

\* EXHIBIT "E" (three) pages 3, Court Reporters transcription of the sentencing hearing. There was not another charge from ELMORE COURT, there was not another sentencing hearing.

There is ONE charge CC-85-69 - and the jury did NOT find GUILTY concerning the victims demise, and all other elements underlying the homicide are enhancement factors that place the homicide into Murder in FIRST degree status, then more enhancements and the Murder is NOW A CAPITAL OFFENSE. CC-1985-000069, Habitual Offender? Y. Two of the sentencing hearing PRIOR convictions was TWO ROBBERY charges at once that Henderson received 10 (ten) years a piece on. ? There was NOT a separate conviction for either of these cases and The Fact is the 1940 criminal code of Alabama DID NOT HAVE MULTIPLE ROBBERY "LEVELS" or "Degrees". The 'Robbery' ACTS, the criminality of it, could have been misdemeanor offense under Alabama's New 1975 Code, ~~Henderson~~ Petitioner states "New" as the Amendments to New Code occur every year, rewriting the law.

o How can Henderson NOT suffer a SUBSTANTIAL, GRIEVOUS ERROR that affected the jury verdict (without question) PLAIN ERROR when Henderson was NEVER properly notified of SPECIFICALLY what Henderson stood to answer for? A Homicide, or a Robbery, ANY professional attorney would state that 2 (two) ENTIRELY different courses of defense would be utilized. A Capital Offense ~~defense~~ defense is to defeat MURDER -

(continued from previous page...)

(5) (Henderson's Exports...)

...A defense for Robbery would defeat Robbery. In a Capital Offense defend to obtain NOT GUILTY verdict on Murder/Homicide and the underlying, enhancement, factor (felony) will betray itself or fall along side the acquittal for the Murder.

Visa Versa, DUE TO THE COMPONENTS OF FACTUAL ALLEGATIONS throughout an indictment it is somewhat questionable to assume anything in hindsight.

Petitioner Henderson offers all 5 (five) exhibits, attached hereto, A, B, C, D, and E 106899X. The "X" stands for Life Without the Possibility of Parole (L.W.O.P.) Henderson pled NOT GUILTY AND fought for Henderson's life WON a reversal and was Transmitted 2 1/2 years later (approximately) to Elmore County where Henderson REFUSED MULTIPLE PLEA OFFERS.

The begrudged Court found a ROUTE TO PUT Henderson away for the remainder of Henderson's. AND HIDE the fact that ELMORE COUNTY AUTHORITIES DISGRACEFULLY ABUSED their GRANTED authority upon a desolate, indigent black youth, that PLED NOT GUILTY before the snowblind caucasian Court of Elmore County that DID NOT HAVE RACE NEUTRAL REASONS for Striking Jury Venire when trying a black defendant. This BATSON claim won Henderson a Reverse/Remand.

Apparently the EVIDENCE against Henderson was poor to none. The fact that Henderson had the AUDACITY to be black and be indicted by a Elmore County Grand Jury was enough to convict any black male, especially to an all white jury.

Henderson's abuse did not stop there. Henderson was totally, completely, dependant upon defense counsel. Henderson has mild retardation. It is ever present and quite annoying when attempting to talk to him, Henderson about legalities.

There is NO possible manner in which anyone would believe Henderson made any impacts upon the defense other than general knowledge that the police had anyway.

The facts of the case are not the issue in this present MANDAMUS and RECEIVING procedurally barred evidentiary issues, substantive rule violations, ineffective assistance of defense counsel, BUT there is THE DENIAL OF COUNSEL ON DIRECT REVIEW, Douglas V California

where was the Appellant Defense Counsel ???  
How could the TREMENDOUS errors involved in the →

... CRITICAL STAGE OF Motion for New Trial Hearing, Rule 24 ANCrA, a mandatory prerequisite to Appellate Review. Issues must first be raised at trial court then Appellate Court. The trial court of Elmore County, Judge John Bush made a habit of disregarding legislative enactments that got in Judge Bush's way. The New Trial Motion must be ruled upon WITHIN 60 (sixty) days. Judge Bush flippantly recounts this at the bottom of Document #5 "EXHIBIT, Handwritten by Judge Bush, The case action summary notes.

Judge Bush took it personally that HENDERSON had gotten a New Trial. Set his boots for activating a conviction then slow walked away from it by procrastinating at every step necessary to include issues in the Appellate Record. To this day HENDERSON states HENDERSON has never received a FREE COPY OF THE TRIAL TRANSCRIPT.

This Court, The U.S. Dist. Ct. for the N. Dist. of Ala., instant case at bar, can recognize the plain error for what it is, BUT CAN THE COURT allow that Elmore County, the State Court, BLATANTLY violated 3 (three) United States Supreme Court Holding passed in the previous 10 (ten) to 13 (thirteen) years? Directly related to the matter at hand?

- A. WHALEN V UNITED STATES 445 US 684 (USSUPCT 1980) - ONE -  
B. JONES V THOMAS 491 US 376 (USSUPCT 1989) - FIVE -  
C. ALBERNAZ V U.S. 450 US 333 (USSUPCT 1981) - THREE -

\* THOMAS (see B "supra") Thomas had been convicted of attempted robbery and of First Degree 'felony' murder. Arguing Legislature did not authorize separate punishment for the FELONY MURDER AND the underlying felony.

However if plain error is committed a Court (federal) may take cognizance of a claim not properly raised before or during trial FR CrimP 52 (b); Fed R Evid. 103 (d).

o ARTICLE III 32 USC "...in All the other cases... THE SUPREME COURT SHALL have Appellate Jurisdiction, BOTH AS TO LAW AND FACTS ...

o Whether petitioner was "in custody" for purposes of MIRANDA requirements is a MIXED QUESTION OF FACT AND LAW not entitled to a presumption of correctness. "Thompson V Kechane 516 US 99 (USSUPCT 1995);

ALSO please see Smalis V Pennsylvania 476 US 140 (1986) USSUPCT: were acquitted for double jeopardy purposes. WHEN A STATE trial judge sustained a demurrer at the close of the prosecution's case in a bench trial. Since the determination was based on the insufficiency of the States evidence to establish factual guilt, The Double Jeopardy Clause barred "... review.



... EXHIBIT D, attached is a perfect example of a Judicial Acceptance of evidence, verdict based on same, deferring actual pronouncement for personal reasons or whatever reasons at regard to the decision maker. Jurys verdict as ACCEPTED by the Court: handwritten TESTIMONY of the presiding adjudicator of Elmore County Circuit Court ~~11/28/90~~ entry line at left side of page above middle. The trial courts ACCEPTANCE of the verdict is the ACCUSAL for the Capital Offense charged by the indictment of which has been related to you on previous pages herein. The Court of Elmore County then WASTONLY and maliciously abused their authority by pronouncing judgment and sentencing Petitioner Henderson when it is clearly early on error of not re-indicting for secondary, count two, of a Robbery First Charge. The main reason the prosecutor did not file for a separate indictment charge is because the pistol would be the singular piece of evidence used to act out the violence that Petitioner Henderson is accused of performing.

The fact is without the ARMED, unnecessary, victims assault where no story would be forthcoming because there is only one left alive to tell the tale.

Henderson doesn't know. Henderson wasn't there.

The point I'm attempting to make is the real world problem of taking advantage of mental instability, emotional distress, to act in a nasty and contrite manner with those with lesser educational benefits. Sometimes like Henderson it's a birth defect.

Henderson did know to appeal. Henderson was granted defense counsel for direct appeal. Henderson never heard from the man after Henderson was transferred back to prison.

The Federal District Court presiding herein MUST give these matters serious contemplation.

Elmore County Circuit Court, sua sponte, gave a instruction allowing for the jury to decide a lesser included offense not based in the original indictment charge.

The original indictment charge was Capital Offense. As legislatively commanded the ONLY lesser offenses of Capital Offenses are Murders/Homicides, Not the lesser included offenses of offenses concerning other statutes.

Petitioner Henderson is suffering unnatural, FALSE IMPRISONMENT, UNLAWFUL IMPRISONMENT in the FIRST DEGREE §13A-6-41 (a), Alabama Code 1975 →

... if he restrains another person under circumstances which expose the latter to a risk of serious physical injury."

**\*\* BE VERY HARD TO ARGUE WITH A STRAIGHT FACE**

that knowingly depriving an American Citizen of their entitlements under the USCA, 1-14, and the Constitution of Alabama 1901, Article I §81-25, and placing them in prison ~~INDEFINITELY~~ ~~isn't~~ isn't significantly more health hazardous than living in open society.

\* Under the circumstances as they are and the provisions relevant to the case at hand this Court, US Dist. Ct. for the N. Dist. of Ala., has the jurisdiction to open an investigation accepting the pro se handwritten declarations of Joe Henderson 106899X concerning substantiated FACTS, proof provided via Government of Alabama documents.

There has been no mistake no misinformation provided to this Court. Joe Henderson #106899X is a black male entitled to Special Class protections pursuant minority race, Civil Rights Act of 1964, The Americans With Disabilities Act of 1990 et seq 42 USC §12101, et seq, 42 USC §1983, JOE HENDERSON #106899X is intellectually slow, mentally impaired, with little to no education, further, a Health Code 5, highest level, Dialysis Patient, no threat at all to society physically impaired with 1 Uness. Must Dialyze at least 3 (three) times a week. The disability would terminate Hendersons life (without treatment) within a year.

• HENDERSON as a defendant in a predominantly caucasian society such as rural Alabama in 1985 the petitioner, Joe Henderson 106899X is requesting federal investigation into the matter.

Pursuant the Alabama Code 1975, Alabama's Rules of Court, Criminal Procedure, there is a time limitations period for nearly every step of prosecution. Henderson will request a 7 day, to include weekends and holidays as determined by Federal Rules of Criminal Procedure, seven day time period for the Attorney Generals Office of Alabama, The Chief Law Enforcement Officer of the State, to locate all the necessary paperwork, documents relevant hereto ie: Court Clerks file 106899X, Henderson v State of Alabama, and State v Henderson, CC-85-69 Elmore County Circuit Court Wetumpka Alabama, The Alabama Criminal Court of Appeals The Alabama Supreme Court, Any District Court, or Supreme Court of the United States of America. Arrest Reports, witness statements trial transcript FROM ONLY THE SECOND TRIAL November 1990,

Answers from the Respondent Representative is to with Henderson 106899X is still incarcerated and is the State of Alabama going to order Henderson released?

Henderson has been acquitted. There would be no more Court action against Henderson 106899X CC-85-69 is VOID. INVALID. Further Henderson requests this Court grant special



... consideration to HENDERSON as this has not been mentioned to the Media as yet not much time remains before they are involved then Nationally based groups will begin there chance.

Henderson wants an unconditionally set release. Henderson needs appointment of counsel and for the Federal Marshals to obtain custody of Henderson 106899X for safekeeping. This matter does not consist of any real problems the argument is that Henderson's day has finally come and the State make a settlement offer for 34 thirty-four years of illegal incarceration.

Henderson pled NOT guilty. Henderson's petit jury ACQUITTED Henderson of the Capital Offense.

Henderson is currently stationed at St Clair Correctional Facility 1000 St Clair Road, Springville Alabama 35146.  
JOE HENDERSON 106899X.

Exhaustion of judicial remedies afforded by State Courts as a condition of issuance by federal courts of Writ of Habeas Corpus for release of Petitioners held or imprisoned by State Authorities 96 LEd2d 129, 94 LEd2d 785, 88 LEd2d 576, 54 LEd2d 873, 97 LEd2d 543, ~~and~~ some exhaustion of claims but not all 43 ALR Fed 631, Sup Ct views constitutes The Constitutional Right to Access to the Courts 52 LEd2d 779, The US Sup Ct's rule of "EXTRAORDINARY CIRCUMSTANCES", The All Writs Act 28 USC § 1651, The Civil Rights Act 1964, The Americans with Disabilities Act of 1990, 42 USC § 12101 et seq.;

"... if an indictment was amended to charge an offense that was not a lesser included offense of the indictment one originally charged then defendants conviction is void because trial court was without jurisdiction to render judgment."

• ELLIS V STATE 686 So2d 1265 1996 Ala Cr App  
Tolliver V State — So2d — (Ala Crim App 2003) bexis 109.

\* Alabama refuses to allow PLAIN ERROR arguments and The Petitioner Henderson is procedurally barred by post conviction Rules per 32, ARCP, The State is required to provide proof that ERROR is harmless and The Petitioner Henderson must provide demonstrable, material proof, Exhibits A B C D and E attached heretofore, of Henderson's factual innocence. Acquitted by Courts acceptance of jury verdict.

See: Thomas V Estelle 1979 CA5 Tex (precedent in 11th Circuit all FIFTH CIRCUIT 1979 and below)

It would be unprecedented abuse of discretion for this Court to accept the State Court, Elmore County, Alabama, CC-85-69, judgments —

... a 'preclusive' effect under full faith and credit doctrine  
 See Montana V US (USSUPCT 1979) 440 US 147; Allen V McCurny (1980 USSUPCT) 449 US 90,

State Court judgments having jurisdiction of parties and the subject matter operates as res judicata in the absence of Fraud or collusion Rhle V Margolies (USSUPCT 1929) 279 US 218.

See Venue Statute 9 ALR Fed 719 (see § 5 [f] on Habeas Corpus.

Constitutional Right to Access to the Courts 521 Fed2d 779  
 State Court judgments are indirectly attacked while it's the Petitioner's detention "in custody" that is the apex of the matter FAY V NOA (1963 USSUPCT)

Congress intended by enacting 42 USC § 1983 make Federal Courts available to PROTECT CIVIL RIGHTS VIOLATIONS OF STATE COURT, Vendo Co V Lel TRO VENS CO (USSUPCT 1977) 433 US 623 (Id @ 633) LAUCH V US (USSUPCT 1972) 405 US 965, England V Vlausanna St Bd of Med Ex. (USSUPCT 1964) 375 US 411;

There is no legal remedy available for Petitioner Henderson see

\* Ex parte Phillips 887 So2d 324 (2004 Ala Sup Ct)

Young V State 516 So2d 858 (Dowdell V State 854

So2d 1195 (Ala Cr App 2002) Holladay V State 629 So2d

673 (Ala 1992); Felder V St So2d (2006 Ala Cr App

Lexis 30 3/3/2006;

Please see: Deas V State 844 So2d 1286 (Ala Cr App

2002) The Lesser included offenses of Murder

Capital Felony Murder; Lee V State 898 So2d 790 (2003 Ala Cr App).

US V Lawton 995 F2d 290 (1993); State V Moore 458 NW 2d 90 (Minn 1990).

HARRIS V OKLAHOMA 433 US 682 (US SUPCT 1977) held ...

subsequent prosecution for Robbery with a Firearm was barred by the DT Clause because defendant had already been tried for felony murder based on the same underlying felony ... for the Due Process, Double Jeopardy purposes "the crime generally described as 'felony murder' is NOT A SEPARATE OFFENSE distinct from its ELEMENTS.

• ILLINOIS V VITALE 447 US 470, 470-21 (1980 US SUPCT)

## \*\*\* JURISDICTION AND VENUE PURSUANT US CODE \*\*\*

• The Honorable United States District Court for the Northern District of Alabama, BIRMINGHAM, at 1729- 5th Avenue North; HUGO L. BLACK US Courthouse Office of Dist. Ct. Clerk, Birmingham, Alabama, 35203 -

\* DOES HAVE JURISDICTION : 28 USC §§ 1331 and 1343 (a) (3);

• VENUE IS APPROPRIATE 28 USC § 1391(b)(2), because the events giving rise to claim is inside this Courts authority at St Clair Correctional Facility (SCCF); 1000 St Clair Road; Springville, Alabama, 35146; JOE HENDERSON #106899K is located at instant prison institution of Alabama Department of Corrections, Headquarters in Montgomery, Alabama, 36130; PO Box 301501; The person holding Petitioner Henderson #106899K in false / Illegal imprisonment is Warden, C. Jones, III Level CORRECTIONAL INSTITUTION WARDEN, head supervisor, per the Orders of ADEC, in Montgomery, for the ORDER by Circuit Court Judge of Elmore County John Bush, presiding, CC-85-69, State v Henderson, Elmore County Circuit Court, CC-85-69, for a Robbery Charge and sentence of Life Without Parole that DID NOT, COULD NOT, LEGALLY have occurred,

Again, HENDERSON has NO OTHER LEGAL REMEDY AVAILABLE. Alabama Judiciary refuse to acknowledge the Plain Error standard of Review for NON-CAPITAL CASES.

\* Henderson, instant cannot file for Mandamus relief, e Ex parte Phillips 882 So2d 324 (Ala 2004); Procedurally barred from filing post conviction petition Accladay v State Rule 32, AACP, 629 So2d 673 (1992); Young v State 516 So2d 858 (Rule 32.2(C) Dowdell v State 854 So2d 1195 (2002 Al Crim))

\* The Supreme Court Ruling : "EXCEPTIONAL CIRCUMSTANCES"

Justice Powell and White, United States Supreme Court proposed plain error rule... service in collateral proceedings as well, Wainwright v SPKES (US SUP CT 1977) 433 US 72; CAER v ALABAMA (Cir 5 Ala) 586 F2d 462 (Cir 5 Ala 1978) binding precedent IGNORED BY THE Alabama State Courts,

This Court, instant case at BAR, Petitioner Henderson, REQUESTS FEDERAL INTERVENTION IN THE FOLLOWING MANNER:

(please see next page).



#### 4 REQUESTED RELIEF:

1. FOR THIS HONORABLE UNITED STATES FEDERAL DISTRICT COURT TO INTERVENE ON BEHALF OF AN ILLEGALLY INCARCERATED INMATE IN CUSTODY OF THE STATE OF ALABAMA through the ORDER of Circuit Court Judge of ELMORE COUNTY ALABAMA, CC-85-69, FOR THE CRIMINAL CHARGE OF ROBBERY IN THE FIRST DEGREE, SUBSEQUENTLY SENTENCED TO PUNISHMENT OF LIFE WITHOUT THE POSSIBILITY OF PAROLE, BY HOLDING PETITIONER HERE OF IN CRIMINALLY VIOLENT ATMOSPHERE, INSTITUTION, KNOWN AS THE ST. CLAIR CORRECTIONAL FACILITY (ADOC) SCCF, ADMINISTRATION WARDEN III, C. Jones, Superintendent, Head of Admin of SCCF, wherein JOE HENDERSON AKA #106899X is held illegally, against Henderson's will, with constant threat of physical violence and/or death on EVERY DAY expectation.
2. US Federal District Court for the N. Dist. of Alabama at Birmingham to RECOGNIZE:
  - A) Henderson has never been convicted by a jury of a criminal offense according to the Alabama Code 1975; See EXHIBIT A attached
  - B) Henderson was ACQUITTED by an Elmore County GRAND JURY for any part in the CAPITAL OFFENSE INCLUDING ELEMENTS thereof on November 28, 1990, See EXHIBIT B and C attached. See EXHIBIT D attached.
  - C) EXHIBIT B clearly shows there is NO Robbery Charges EVER in name Joe Henderson.
  - D) EXHIBIT C clearly shows there is/was ONE Capital Offense charge by an Elmore County Grand Jury CC-85-69, (12 of 16)
  - E) Now please see D again. Ruling of "acceptance" of verdict EXTINGUISHED the Capital Offense charge, Robbery was an element of same →

\* Requested Relief : continued :

\* EXHIBIT E is presented to show the Court the facade of a sentencing hearing Joe Henderson petitioner hereby was allowed :

ISSUE presented HEREIN FOR THE COURT'S DETERMINA-  
TION :

(1) Is Joe Henderson 106899X LEGALLY INCARCER-  
ATED IN/ BY THE STATE OF ALABAMA ?

(2) HAS JOE HENDERSON 106899X BEEN ACQUITTED  
AND pursuant FRAUD and LEGAL complexities same could  
not be expected to understand been found guilty of  
Robbery First Degree, sentenced to INDEFINITE INCARCERATION,  
LWOP, as punishment, DENIED A DIRECT APPEAL, DENIED  
APPELLATE, for Capital Offense Indicted Charge CC-85-69  
pursuant §13A-5-40 (a) (2), Alacode 1975, wherein NO LESSER  
included offense other than Murder as defined in §13A-  
6-2 (a) (1) (2) and (3), Only a Victims Death, Murder, is  
a lesser-included offense. BECAUSE pursuant Alabama law,  
Code 1975, Capital Offense is ONE CRIME, with multiple  
Elements, See also : ILLINOIS V VITAL: 447US 476-21  
(1980 USSUPCT) - underlying felonious activity is an ele-  
ment, NOT a separate offense, an enhancement factor to  
send Murder to Capital Offense stage/ level.

(3) Henderson has requested LEGAL AID and Assistance  
from Inmate, Jailhouse, Lawyers that could NOT breach  
Elmore County Alabama puzzling documents search  
answer. Therefore the mentally deficient Joe Henderson  
\* 106899X has been ignored by the " CONFLICT OF INTER-  
EST " ADIC, specialists custody classification, pro-  
fessional law enforcement peoples, Agencies,

(13) Thirteen of 16 NEXT

Requested Relief: continued (2nd time):

\* To include the Attorney General of Alabama that was requested to provide answer for Hendersons Incarceration: on December , 2018, but the Montgomery County Circuit Court DID NOT FILE the Motion until the 20th, 2018, December. Henderson did not receive the ANSWER of Acceptance / Filing by the Montgomery County Circuit Court until January 7, 2019. THEN the Returned Motion HAD NO FILE NUMBER, only Stamped Dated / Received, 20th Dec 2018, BUT IT CAME FROM, WAS Returned by LEE County in Opelika Alabama that has absolutely no interest in the case whatsoever, Joe Henderson 106899X has shown the US District Court that it is FUTILE to attempt to compel response from the State of Alabama concerning the illegal incarceration of Joe Henderson 106899X

Once this Honorable Court has reviewed the instant WRIT OF PROHIBITION, MANDAMUS, per 28 USC § 1651, All Writs Act, the accompanying EXHIBITS attached heretofore, the Intervention of this Court the Courts Immediate Attention, Article III, Court, protecting US Citizens from State, Authority, Governmental ABUSES, please send Federal Marshalls to locate Take into federal custody Joe Henderson 106899X Because ADEC may order Henderson moved, transferred. ADEC headquarters 50 S. Ropley Street, PO Box 30501, Montgomery, Alabama 36130; Any thing can happen to Henderson because of Governmental abuse. To keep Henderson hidden. See: Exhibit A, Henderson does exist!!!

(14) Fourteen of 16 NEXT...



Requested Relief (continued 3rd page)

Henderson desperately needs federal assistance in this matter.

For 34 years the State of Alabama has hidden the fact that Henderson is illegally incarcerated.

\* NO Robbery Charge exists under the State Court Case number CC-85-69, The Court Clerk's letter at Exhibit B, proves this;

This Court is Petitioned by the Inmate: Joe Henderson 106899X of Alabama Department of Corrections at S.C.C.F., 35146, to ORDER:

The Petition for ALL WRITS ACT WRIT OF PROHIBITION is necessary to compel the Attorney General of Alabama, Representative of Alabama, ADOC, SCCF, Warden III C. Jones, and Elmore County Circuit Court, Wetumpka, Alabama, case number CC-85-69, AS THIS COURT DEEMS JUST AND PROPER AS FAR AS PROCEDURE OF COURSE TO COMPEL STATED Representative to ANSWER the Charges of the Petitioner Joe Henderson 106899X has been FAISELY/ILLEGALLY imprisoned within ADOC FOR 34 years AFTER an Elmore County Grand Jury Acquitted Henderson of the Capital Offense §13A-5-40 (a)(2), Alabama Code 1975, to include the UNINDICTED, UNACCUSED Robbery First Charge "accepted" by determination of the Cir Ct of Elmore County erroneously. The Representatives of Alabama must answer, The Equal Protection Clause →

Requested Relief (page 4 continued):

END  
16 of 16

\* The Court instant will find that every entitlement GRANTED the instant Petitioner Henderson by way of the USC, USCA, The Ala. Const. 1901, Art. I §§ 1-25, HAS BEEN STRIPPED AWAY FROM Henderson for the past 34 years 1<sup>st</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 14<sup>th</sup>, 4<sup>th</sup> USCA, Ala Code 1975, All, Henderson is further protected 3 (three) times over by The Equal Protection Act, 42 USC § 1983, Civil Rights Act of 1964, ADA of 1990 (Americans with Disabilities Act of 1990) Because: Special Class Protections:

- (A) Henderson as shown on Exhibit A is a minority member;
- (B) Henderson is mentally, Intellectually, unpaired. (Assistance provided by inmates)
- (C) Henderson is a DIALYSIS PATIENT compelled to Dialygnation 3 (three) times a week;
- Henderson Deserves Federal Intervention to Compel State of Alabama prove a jury of Elmore County found Henderson guilty of the Indictable Offense Accused Exhibit C attached, on November 28, 1990, where is the Robbery First Degree Indictment?
- I, Joe Henderson, certify under the penalty of perjury that the above stated facts are true and correct to the best of my ability and understanding and that I have placed ONE Copy of the foregoing 16 page document to MAM-DAMIS in the SCCF Institutional Mailbox postage provided addressed to Attorney General of the State of Alabama 501 Washington Ave, PO Box 36130 Montgomery Alabama 36130 on today's date 1-20-19

Respectfully  
Joe Henderson pro se  
Joe Henderson 100594X  
SCCF Q-33  
1000 St Clair Road  
Springville Ala 35146

Done this the 20 day of  
January 2019  
pursuant 28 USC § 1746

END

(16) (16 of 16)

## Alabama Department of Corrections

CLAS091

## Classification Inmate Summary

AIS 00106899X HENDERSON, JOE

AIS: 00106899X

Prev/Next: 0000Z452

Inmate: HENDERSON, JOE

Legal:

R/S: BM Dob: 12/05/1953 SSN: xxx-xx-5301

Inst: 067 - ST. CLAIR CORRECTIONAL FAC. BED #

Admit: 11/28/1990 2 LIFE SENTENCE W/O PAROLE

Status: 82 - INCARCERATED

Jail: 005Y 05M 27D

Retro CIT: NONE

Security: (5) Five

MH: 0

HC: 5

Custody: MED-9 Custody Date: 05/14/2018

Parole Review Date: \* NONE \*

Alias: HENDERSON, JOE

IMAS: No Current Status Entered in IMAS

Class Date: 11/28/1990

Jury Verdict/Sentencing

CLASS IV - PROHIBITED FROM EARNING GOODTIME

Total Term	Min Rel Dt	GoodTime Bal	GoodTime Rev	Dead Time	Long Date
LWOP	99/99/9999	000000 Days	000000 Days	00Y 00M 00D	99/99/9999

Inmate Literal:

ONLY ONE CASE

Offenses for 00106899X

Seq	County	Sent Dt	Case Nbr	Total Fees	Hab Off
1	ELMORE	11/28/1990	CC1985000069	50.00	Y

JL-CR  
2002Term  
LWOP

CS

Detainer Warrants for 00106899X

Inmate Currently has NO ACTIVE Detainer Warrants

Probations, Escapes and Paroles for 00106899X

No Probations

No Escape Sentences

No Escapes

No Parole Releases

Disciplinarys for 00106899X

Seq: 9	MAJOR Discipline on 07/29/2016 At Inst: 040 - WILLIAM E. DONALDSON CORR FAC
	Cust from 29 to 29 Retain Days: 0 Time Lost: 0Y 0M 0D
	Rule: 501 - FIGHTING WITHOUT A WEAPON
Seq: 8	Behavior Citation on 06/01/2007 At Inst: 777 - LIMESTONE SPECIAL UNIT
	Cust from 29 to 29 Retain Days: 0
	Rule: 63 - DISORDERLY CONDUCT
Seq: 7	Behavior Citation on 11/15/2004 At Inst: 777 - LIMESTONE SPECIAL UNIT
	Cust from 29 to 29 Retain Days: 0
	Rule: 85 - VIOLATION OF INSTIT. RULES OR REG.
Seq: 6	MAJOR Discipline on 01/28/2002 At Inst: 777 - LIMESTONE SPECIAL UNIT
	Cust from 69 to 69 Retain Days: 0 Time Lost: 0Y 0M 0D
	Rule: 64 - POSSESSION OF CONTRABAND

CC-85-18  
ELMORE  
COUNTY

Run Date: 12/17/2018 12:09:01 PM

Page 1 of 2



# Circuit Clerk of Elmore County

B

LARRY DOZIER  
Circuit Clerk  
Elmore County, Alabama



SHARON CABLES  
Deputy Clerk

February 28, 2012

Joe Henderson  
AIS #106899  
Limestone Correctional Facility  
28779 Nick Davis Road  
Harvest, AL 35749-7009

Dear Mr. Henderson:

This letter is in response to your "Request for Legal Documents".

This office has no record of any charge for anyone under the name of Joe Henderson for the charge of Robbery.

I hope this information has been helpful to you and your situation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry Dozier".

Larry Dozier  
Circuit Clerk

LD/tm

A large, irregular black ink blot or redaction mark covering a significant portion of the lower-left side of the page.

CC-85-69  
Elmore  
County

INDICTMENT

STATE OF ALABAMA

Elmore COUNTY

Circuit Court

Spring Term, 19 85

The Grand Jury of said County charge that before the finding of this Indictment, Joe Henderson,

whose true name is to the Grand Jury unknown, otherwise than as stated, did intentionally cause the death of Wilson Jolly, Sr. by shooting him with a pistol and the said Joe Henderson caused the death during the time that Joe Henderson was in the course of committing or in connection with or attempting to commit a theft of lawful U.S. currency, a better description of said currency being otherwise unknown to the Grand Jury, which was the property of Jolly's Grocery, owned by J. Wilson Jolly, Sr. Louise Jolly, J. Wilson Jolly, Jr. and Adelle Jolly, by the use of force against the person of Wilson Jolly, Sr. with the intent to overcome his physical resistance or physical power of resistance, while the said Joe Henderson was armed with a deadly weapon or a dangerous instrument, to-wit: a pistol, in violation of Section 13A-5-40 (a) (2), of the Code of Alabama,

CC-85-69  
Elmore  
County

# ELMOORE CIRCUIT COURT JUDGE

Date

ACTIONS, JUDGMENTS, CASE NOTES

## BUSH

000007

11-5-90 Order on Pending Motions. (Copy to: Atty. & P.A.)

11-20-90 Order upon Review of District Attorney's file.  
(C. to: Atty. & P.A.)

11-26-90 Deft present w/ counsel. Deft's Mot. to Quash Jury Verdict filed.  
Def't Motion to Limit filed. Def'ts Amendment to Mot. to Quash filed.  
After hearing and argument Motions to Quash & Def't Motion to Limit Denied. States Oral Motion to use prior trial testimony of David Johnson. Hearing. Motion Granted as per record. JB

11-27-90 Jury voir dire + selection. JB

11-27-90 Deft present w/ counsel. Jury identified, sworn and seated.  
TRIAL. JB

11-28-90 TRIAL. After deliberation jury returned a verdict which was accepted by the Court as follows: "We, the jury, find the Defendant Joe Henderson Guilty of Robbery 1<sup>st</sup> as embraced in the indictment. In presence of Counsel for the Defendant. Sentencing hearing held, State introduced certified copies of 3 prior felony convictions. Deft adjudged Guilty of Robbery 1<sup>st</sup> and having nothing to say, pursuant to the Plakitval Offender Act Deft sentenced to serve Life in the penitentiary without parole and assessed \$50 U.C.F.  
Def't informed of right to appeal. John R. Bush  
Circuit Judge

2-14-90 Motion for Mistrial or in the alternative for a New Trial.

2-14-90 Motion to Transcribe Certain Portions of Trial to be used as exhibits in Motion for Mistrial and/or New Trial.

2-14-90 Motion to Transcribe Certain portions of Trial, etc., granted. (C to: Atty, reporter & P.A.)

-8-91 Order and Consent to render a decision on Def'ts Motion for New Trial past 60-day cut-off. Also,

CC-85-69



E-1 (three pages)

1 there is one in the court file. And  
2 since I have knowledge that since  
3 Mr. Henderson's sentencing on the  
4 first trial of this case he has been  
5 continuously incarcerated, the  
6 Court is not going to order an  
7 additional presentence  
8 investigation. Basically if the  
9 State proves what I expect they are  
10 going to offer, the Court has no  
11 discretion with regard to sentencing  
12 pursuant to the statutes promulgated  
13 by the legislature.

14 So I want to go on and proceed  
15 with the sentencing part of this  
16 case at this time.

17 Ms. Clardy, does the State  
18 have anything they wish to offer  
19 with regard to sentencing?

20 MS. CLARDY: Yes, Your Honor. States  
21 Exhibit A-1 is a certified copy a  
22 conviction out of Pike County,  
23 Alabama, dated 2/16/73 where Joe  
24 Henderson pled guilty to assault  
25 with intent to murder and was

11/28/85

CC-85-69  
Elmore  
County

Circuit Judge  
BUSH

E-2

1 sentenced to ten years. This  
2 conviction shows on its face that he  
3 was present with his own attorney J.  
4 B. Wiley.

5 THE COURT: You have anything  
6 additional?

7 MS. CLARDY: Yes, sir. State's Exhibit  
8 A-2 is a certified copy of a minute  
9 entry out of Lowndes County,  
10 Alabama, Case Number CC-77-39  
11 wherein on the 7th of October of  
12 1977 Joe Henderson was convicted of  
13 two counts of robbery. He was  
14 sentenced to ten years on each count  
15 to run concurrently and that  
16 sentence also ran currently with any  
17 sentence he was serving at the  
18 time.

19 This document also shows on its  
20 face that he was represented by an  
21 attorney Mr. Jasper Roberts.

22 MR. DEBARDELABEN: I believe on Case  
23 CC-77-39, the defendant wasn't  
24 convicted, he pled guilty.

25 THE COURT: You have had an opportunity

**E-3**

1 to review both of these exhibits,  
2 Mr. DeBardelaben; is that right?

3 MR. DEBARDELABEN: Yes, sir, they are  
4 certified copies of the conviction.

5 THE COURT: Do you have any objections  
6 to the Court receiving these  
7 certified copies of these prior  
8 convictions?

9 MR. DEBARDELABEN: I would prefer to  
10 receive all the records rather than  
11 just the conviction to see if there  
12 was any extenuating circumstances  
13 specifically on the last one where  
14 it says two counts it is on one  
15 case. And I don't know how the  
16 Habitual Offender Act reads if it is  
17 one case with two counts. It is one  
18 sentence. So I don't believe -- I  
19 have my doubts about whether that  
20 invokes the Habitual Offender Act.

21 THE COURT: States Exhibit A-1 and A-2  
22 will be admitted. The objection of  
23 defense counsel with regard to these  
24 exhibits and what they show is  
25 noted. And the Court has reviewed